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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

CV 10-4071

COMPLAINT

(S.F.) MT

Jury Trial Demanded

PHILIP G. BARRY, Individually,
 & PHILIP G. BARRY, as portfolio
 manager of the Leverage Group,
 Plaintiffs

AMON, J.

-against-

BLOOM, M.J.

THE UNITED STATES SECURITIES
 AND EXCHANGE COMMISSION;
 DAVID ROSENFELD, Associate
 Director, S.E.C. New York
 Regional Office; KEN C. JOSEPH
 Assistant Director, S.E.C.
 New York Regional Office; S.E.C.
 employee JOHN DOE; S.E.C. employee
 JANE DOE,

Defendants

x

Plaintiffs, by way of complaint against the Defendants
 allege as follows:

PARTIES

1. Plaintiff PHILIP G. BARRY is an individual who resides
 in the Borough of Brooklyn, County of Kings, City and State of
 New York.

2. Plaintiff PHILIP G. BARRY, in his capacity as portfolio manager of the Leverage Group, maintained a principal place of business in the Borough of Brooklyn, County of Kings, City and State of New York.

3. Defendant, the UNITED STATES SECURITIES AND EXCHANGE COMMISSION (S.E.C.), is a U.S. Federal Government agency with a regional office at 3 World Financial Center, New York, NY 10281.

4. Upon information and belief, Defendant DAVID ROSENFELD is the Associate Director of the S.E.C. regional office at 3 World Financial Center, New York, NY 10281.

5. Upon information and belief, Defendant KEN C. JOSEPH is an assistant director at the S.E.C. regional office at 3 World Financial Center, New York, NY 10281.

6. Upon information and belief, Defendants JOHN DOE and JANE DOE, are employees of the United States Securities and Exchange Commission.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter of the action, in that the Defendants are a United States Federal Agency, and employees thereof, and it has pendent jurisdiction over the federal and state statutory and common law causes of action.

8. Venue is proper in the Eastern District of New York, because the plaintiff(s) are citizen(s) of, and conducted business in the State of New York within the Eastern District.

STATEMENT OF CLAIM

9. For a period of approximately thirty (30) years, plaintiff Philip G. Barry has owned and operated a mail order business in Brooklyn, New York, doing business as *Barry Publications*, selling vinyl LP records, music cassette tapes, compact discs, and DVDs. Also for approximately (30) years, plaintiff Philip G. Barry in his capacity as portfolio manager of the Leverage Group, has managed investments for an investor group.

10. On September 8, 2010, the S.E.C. issued a press release #2009-193 which it also posted to its website. (www.sec.gov) The first paragraph of this release refers to plaintiff Philip G. Barry's business as "his pornography mail order business." On page 2 of the same release, the plaintiff's business is referred to as, "a separate mail order business that sold pornographic materials." (Exhibit A)

11. The aforementioned press release bore the names of defendants David Rosenfeld and Ken C. Joseph. Defendants John Doe and Jane Doe are unknown employees of the S.E.C. believed to have participated in the promulgation and distribution of the press release.

12. All defendants knew or should have known that the phrases in the press release: "his pornography mail order business," and "a separate mail order business that sold pornographic materials" were false and defamatory *per se*.

13. As a result of the inclusion of these libelous phrases in their press release, all New York City local television evening newcasts repeated the defamatory assertion, and credited

the defendant S.E.C. as their source. At least two major network affiliates included the defamatory material in their lead story. It was also featured prominently on radio, in all major local newspapers, as well as the Wall Street Journal and New York Times. Within a few weeks of the release, an internet search using the plaintiff's name with "pornography" returned tens of thousands of pertinent hits, some of which are translations of the story into numerous other languages on sites throughout the world. (Exhibit B)

COUNT 1

LIBEL

14. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

15. By making the written, purported factual assertion that the plaintiff's business was a pornography business, and by disseminating this assertion to the press and other third parties, both actively, and through their website, the defendants, acting *ultra vires*, maliciously attempted and succeeded, to make the plaintiff a target of ridicule, hatred, scorn and contempt, and thereby engaged in tortious Libel as defined by New York State statute, and under common law.

16. Whereas information detailing thousands of items previously sold, and others, then currently being offered for sale by the plaintiff's business, was readily available to the defendants on the internet, prior to, and on the date of their press release, under the business name Barry Publications, which was known to them, and whereas not a single one of those items was pornographic, the defendants acted with reckless disregard for truth or falsity.

COUNT 2
OBSTRUCTION OF JUSTICE

17. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

18. USC Section 1503 states that anyone who "*corruptly..., influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede the due administration of justice is guilty of a crime of obstruction of justice.*" This clause provides broad protection to the "due administration of justice." Federal courts have read this clause expansively to proscribe any conduct that interferes with the judicial process. It is also required that a defendant know of the pending judicial proceeding, and have the corrupt intent to interfere therewith. Actual obstruction is not needed to cross the "endeavor" threshold. On page two of the defendant's press release, it states, "Separately, the U.S. Attorney's Office for the Eastern District of New York (USAO) today announced criminal charges against Barry for the same misconduct alleged in the SEC's complaint." Defendants were therefore aware of a pending judicial proceeding against the plaintiff, at the time they issued their libelous press release. Defendants were also fully familiar with the specifics of the pending case, and knew or should have known that in such cases, most if not all witnesses will be personally acquainted business clientele, associates etc. of the accused. By falsely and publicly accusing the plaintiff of running a pornography business, the defendants knew, or should have known that such an assertion would alienate potential defense witnesses in the pending case, many of whom were known by the defendants to be devoutly religious, and would, relying on information from their government, (i.e. the defendants), come to the conclusion that Mr. Barry was morally reprehensible, and had been secretly

running an immoral clandestine business for years. Such widespread wrongful influence over potential witnesses placed the prospects of a fair trial in the pending case in possibly irreparable jeopardy. For these reasons, and again acting *ultra vires* to their lawful duties as a regulator of the securities markets, the defendants have engaged in obstruction of justice.

COUNT THREE

INTERFERENCE WITH CONTRACTUAL OBLIGATIONS

19. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

20. By maliciously, or with reckless disregard for truth or falsity, the defendants, through their defamatory conduct, have caused damage to the reputation of the plaintiff. This damage has severely impaired his ability to fulfil his business related contractual obligations. In doing so, and again acting *ultra vires* to their lawful duties, the defendants have committed tortious interference with contractual obligations.

COUNT FOUR

PRIMA FACIE COMMON LAW TORT

21. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

22. Through their willful action as herein described, the defendants have acted with intent to cause injury, and have caused actual injury. Actual injury has extended to the investors

in the Leverage group which plaintiff managed. The libel contributed to a severe state of discord between the plaintiff and the investors, and amongst the investors themselves, resulting in substantial loss of the Group's real property assets. The defendants have engaged in their action without any possible reasonable justification, and therefore engaged in a *prima facie* tort under common law.

WHEREFORE, Plaintiffs demand judgment on all Counts against the defendants as follows:

- a. For compensatory and consequential damages for irreparable harm done to Philip G. Barry individually, the sum of fifty-million dollars (\$50,000,000.00);
- b. For compensatory and consequential damages done to Philip G. Barry as portfolio manager of the Leverage Group, the sum of fifty-million dollars (\$50,000,000.00) to be collected and held by the Court for the benefit of the investor members of the Leverage Group, and distributed proportionately according to the amount of their respective investments therein.
- c. Treble punitive damages in the amount of one-hundred and fifty million dollars, (\$150,000,000.00) half of which to be collected and held by the Court and distributed proportionately to the investors of the Leverage Group.
- d. For an order requiring the defendants to issue an unequivocal retraction of their libel in the form of a press release, and distribute said release in the manner and extent as the instant release of September

8, 2009, including the posting on their website and the retention thereon for a period of time not less than six years from the date of judgment.

- e. For a contingent order, that in the event that the retraction does not garner press coverage commensurate with the original libel, then the defendants shall be required to place paid advertisements, at their own cost and expense containing the retraction, in the same media, and in sufficient quantity, to reach equivalence with the original press coverage of the libel.
- f. For attorneys' fees, cost of suit, and such other further relief as the Court may deem just and proper.

Dated: September 7, 2010
Brooklyn, New York


Philip Barry, Individually
as Plaintiff
477 82nd Street
Brooklyn, NY 11209

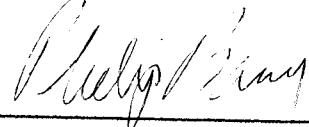

Philip Barry, Plaintiff in
his capacity as portfolio
manager of the Leverage
Group (718) 745-2537

EXHIBIT A



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U.S. Securities and Exchange Commission

SEC Charges New York-Based Money Manager in \$40 Million Ponzi Scheme

**FOR IMMEDIATE RELEASE
2009-193**

Washington, D.C., September 8, 2009 — The Securities and Exchange Commission today charged a Brooklyn money manager for running a \$40 million Ponzi scheme in which he promised approximately 800 investors guaranteed high returns from safe, liquid investments, but instead spent their money on real estate, his pornography mail order business, and other interests.

Additional Materials

- [Litigation Release No. 21199](#)
- [SEC Complaint](#)

The SEC alleges that Philip G. Barry and his firms Leverage Group, Leverage Option Management Co., Inc, and North American Financial Services defrauded investors, including senior citizens and retirees, by selling securities in Leverage investment funds. According to the Commission's complaint, Barry provided fake account statements to investors that recorded growing account balances and concealed that Barry had not been trading securities at all for several years. Neither Barry nor any of his related firms is registered with the SEC in any capacity.

"Barry was an unscrupulous and unregulated investment manager who lured victims with false promises of investment safety, lofty performance, and liquidity," said George S. Canellos, Director of the SEC's New York Regional Office. "While Barry guaranteed investors high returns and provided them with false account balances, he was secretly diverting the funds into unauthorized ventures and for his personal use."

The SEC alleges that Barry and his firms made numerous and varied misrepresentations to induce investors to invest in or to maintain their investments with the Leverage investment funds. For example, Barry falsely represented that he would use the investors' funds to trade in options or other securities. In addition, Barry falsely told investors that he would use a proven trading strategy to protect investors' principal and generate guaranteed returns of as much as 21 percent per year. As alleged in the complaint, these purportedly guaranteed rates of return were simply numbers arbitrarily selected by Barry. Barry also misrepresented to some investors that their investments in Leverage would be protected from loss by privately obtained insurance and/or by the Securities Investors Protection Corporation (SIPC). Barry told investors that they could liquidate

their investment at any time and withdraw their funds, after providing Leverage with a few weeks notice.

The SEC's complaint, filed in the U.S. District Court for the Eastern District of New York, alleges that, by approximately 1999, Barry had ceased investing any of his investors' funds in options or other securities. Instead, the Commission alleges that Barry ran a Ponzi scheme in which he used incoming investor money to repay other existing investors and diverted the remaining investor funds for his own personal use. According to the Commission's complaint, Barry spent the money by purchasing real estate in his own name and those of other entities he controlled, paying expenses of a separate mail order business that sold pornographic materials, and supporting his lifestyle.

The SEC's complaint charges Barry, Leverage Group, Leverage Option Management Co., Inc, and North American Financial Services with violating Section 17(a) of the Securities Act of 1933, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Sections 206(1), 206(2), 206(4) and Rule 206(4)-8 of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and financial penalties against all defendants.

Without admitting or denying the allegations in the complaint, Barry, Leverage Group, Leverage Option Management Co., Inc, and North American Financial Services agreed to settle the SEC's claims against them and consented to the entry of a judgment, subject to approval by the court, that enjoins them from future violations of the above provisions of the securities laws and orders them to pay disgorgement, prejudgment interest and a civil penalty, the amounts of which will be determined at a later date. Barry also has consented to the issuance of a Commission order barring him from association with an investment adviser.

Separately, the U.S. Attorney's Office for the Eastern District of New York (USAO) today announced criminal charges against Barry for the same misconduct alleged in the SEC's complaint.

The Commission acknowledges the assistance and cooperation of the USAO and the Federal Bureau of Investigation in this matter.

#

David Rosenfeld
Associate Director, SEC's New York Regional Office
(212) 336-0153

Ken C. Joseph
Assistant Director, SEC's New York Regional Office
(212) 336-0097

<http://www.sec.gov/news/press/2009/2009-193.htm>

EXHIBIT B

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Brooklyn's Madoff, Ponzi-schemer Philip Barry, has been busted; he ...

Sep 8, 2009 ... Brooklyn **Philip Barry** ponzi scam in Bay Ridge leaving Federal Bankruptcy ... him of using investor funds to run a mail-order **porn** business. ... www.nydailynews.com/.../2009-09-08_brooklyn_s_benjamin_madoff_has_been_busted.html - Similar

Philip Barry Charged In Ponzi Scheme With Porn Link

Sep 9, 2009 ... NEW YORK — A small-time money manager who did business out of a shabby storefront in Brooklyn was charged Tuesday with running a \$40 ... www.huffingtonpost.com/.../philip-barry-charged-in-p_n_280371.html - Cached - Similar

SEC busts Brooklyn money manager in \$40M porno Ponzi scheme ...

Sep 8, 2009 ... SEC busts Brooklyn money manager in \$40M **porno Ponzi** scheme. Money manager **Phillip Barry** allegedly ran a \$40M **Ponzi** scheme, ... www.investmentnews.com/article/20090908/.../909089989 - Cached - Similar

No Happy Ending In Porn Ponzi - Forbes.com

Sep 14, 2009 ... For 30 years **Philip Barry** ran a \$40 million pyramid scheme alongside a secret **porn** ... **Ponzi** Schemes. No Happy Ending In Porn Ponzi ... www.forbes.com/.../ponzi-scheme-barry-markets-equities-prosecution.html - Cached - Similar

Alleged Ponzi Scheme / Porno Business Operator Arrested - White ...

Alleged Ponzi Scheme / Porno Business Operator Arrested. By Caleb Groos on September 9, 2009 11:52 AM | No TrackBacks. **Philip Barry**, a Brooklyn "money ... blogs.findlaw.com/.../alleged-ponzi-scheme-porno-business-operator-arrested.html - Cached

Philip Barry is accused of running a Ponzi scheme to finance porn ...

Sep 9, 2009 ... Authoritative internet-edition about electronic finance, ecommerce, payment systems, internet- banking, hyip and about virtual economy on ... ecommerce- journal.com/.../17997_money_manager_accused_of_running_40_million_ponzi_scheme_with_porn_li - Cached

There's A New Ponzi Schemer Under Arrest, And He Has A Mail Order ...

Sep 9, 2009 ... **ponzi** schemes.; philip G. barry.; **philip barry**; brooklyn.; **porn**; investments.; money

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[Philip Barry Is Accused of Running Ponzi Scheme in Brooklyn - News](#)

Sep 9, 2009 ... Brooklyn's \$40 Million Ponzi & Porn Scheme Suspect ... **Philip Barry**, 5... NYC man charged in Ponzi scheme with porn link — NY Post: News ...

[newyorkblips.dailyradar.com/.../philip-barry-is-accused-of-running-ponzi-scheme-in/](#) - Cached

[Bklyn's Madoff, Ponzi-schemer Philip Barry, has been busted - Topix](#)

11 posts - 6 authors - Last post: Dec 28, 2009
Federal agents arrested accused Ponzi-schemer **Philip Barry** Tuesday at his ... Maybe they can get a slice of his porn bus or that land he ...

[www.topix.com/forum/city/...ny/TR0PTQBA5K91OIB7F](#)
- Cached - Similar

[That \\$40 Million Ponzi-For-Porn Scheme](#)

Sep 8, 2009... Brooklyn money manager **Philip Barry** and his related firms for defrauding some ... Barry's Ponzi scheme money was used to purchase inventory and pay ... Schmeeky, he probably thought that Internet Porn was just a fad. ...

[www.businessinsider.com/the-40-million-ponzi-for-porn-scheme-2009-9](#) - Cached

[Alleged ponzi schemer Philip Barry faces charges in Brooklyn ...](#)

Dec 18, 2009 ... An alleged Ponzi schemer dubbed "the Brooklyn Madoff" was in court ... federal courtroom -- to demand that **Philip Barry's** \$500000 bail, ...
[www.nypost.com/.../brooklyn_madoff_lite_AXc0ZxhtvSnDldjyfHuP3I](#)
- Cached

[Brooklyn "Bernie" Busted in \\$40-Million Ponzi Scheme | NBC New York](#)

Sep 8, 2009 ... **Philip Barry** told investors he was investing in stock options but ... to start a mail-order porn business, and lost millions in the process.
[www.nbcnewyork.com/.../Brooklyn-Bernie-Money-Manager-Busted-in-Million--Ponzi-Scheme--57706172.html](#) - Cached - Similar

[NYC Man Charged in Ponzi Scheme With Porn Link - ABC News](#)

Sep 8, 2009 ... NYC Man Charged in Ponzi Scheme With Porn Link. ... But in reality, investigators said, **Barry** was using much of the money to speculate on ...
[abcnews.go.com](#) > US

[Alleged Ponzi schemer Philip Barry back in Brooklyn after posting bail](#)

Oct 4, 2009 ... Alleged Ponzi schemer and pornography peddler **Philip Barry** is back at his favorite ... Brooklyn's Bernie Madoff used funds to run

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